

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Revision of Annual Charges to Public Utilities
(PJM Interconnection, L.L.C.)

Docket No. RM00-7-010

ORDER DENYING REHEARING

(Issued October 22, 2003)

Summary

1. In this order the Commission denies the request of PJM Interconnection, L.L.C. (PJM) for rehearing of its most recent annual charges bill. This order benefits customers by ensuring that the Commission recovers its electric regulatory program costs as the controlling statute requires.

Background

2. On August 25, 2003, PJM requested rehearing of its annual charges bill for fiscal year (FY) 2003. PJM argues that the Commission: (a) failed to include in its billing calculations all of the reported volumes of transmission;¹ (b) included an incorrect volume of transmission for the Midwest Independent Transmission System Operator, Inc. (Midwest ISO);² and (c) failed to collect from certain companies that it should have collected from last year.³ PJM asks that the Commission review the process by which it

¹PJM Rehearing at 3-4.

²Id. at 4.

³Id. at 5-7.

collected and analyzed the data underlying its FY 2003 billings and, following the completion of the review, adjust PJM's annual charge invoice for FY 2003.⁴ On September 10, 2003, the New York Independent System Operator, Inc. (New York ISO) filed a motion to intervene, raising no substantive issues.⁵

Discussion

A. Procedural Matter

3. We will deny the New York ISO's motion to intervene for lack of good cause. The New York ISO does not allege that its annual charges bill for FY 2003 was incorrect. If the New York ISO thought that its annual charges bill for FY 2003 was incorrect, its remedy was to file a request for rehearing of its annual charges bill, specifying the respects in which it thinks the Commission incorrectly calculated its bill. The New York ISO did not do so.

B. The Omnibus Budget Reconciliation Act of 1986

4. As required by Section 3401 of the Omnibus Budget Reconciliation Act of 1986,⁶ the Commission's regulations provide for the payment of annual charges by public utilities.⁷ The Commission intends that its electric annual charges in any fiscal year will recover the Commission's estimated electric regulatory program costs (other than the costs of regulating Federal Power Marketing Agencies (PMAs) and electric regulatory program costs recovered through electric filing fees) for that fiscal year. In the next fiscal year the Commission adjusts the annual charges up or down, as appropriate, both to eliminate any over-or under-recovery of the Commission's actual costs and to eliminate any over- or under-charge of any particular person. The Commission accomplishes this by recalculating the annual charges and carrying over any over- or under charge from the prior year as a credit or debit on the next fiscal year's annual charges bill.⁸

⁴ Id. at 7.

⁵ The New York ISO says that it filed its motion to intervene "out of an abundance of caution." Motion to Intervene at 2.

⁶ 42 U.S.C § 7178 (2000).

⁷ 18 C.F.R. Part 382 (2003).

⁸ 18 C.F.R. § 382.201 (2003). See, e.g., Revision of Annual Charges to Public Utilities, Order No. 641, 65 Fed. Reg. 65,757 (November 2, 2000), FERC Stats. & Regs. Regulations Preambles July 1996-December 2000 ¶ 31,109 at 31,841-42 (2000), reh'g

5. In calculating annual charges, the Commission determines its total electric regulatory program costs and subtracts all PMA-related costs and electric filing fee collections to determine its collectible electric regulatory program costs. The Commission charges that amount to public utilities that provide transmission service.

6. Public utilities that provide transmission service and thus are subject to annual charges must submit FERC Reporting Requirement No. 582 (FERC 582) to the Office of the Secretary by April 30 of each year, providing data for the previous calendar year.⁹ The Commission uses that data to allocate the Commission's electric regulatory program costs among the public utilities that provide transmission service. The Commission issues bills for annual charges, and public utilities subject to annual charges must pay the bills within 45 days of the date on which the Commission issues the bills.¹⁰

C. Accuracy of Annual Charges

7. PJM challenges the accuracy of the Commission's calculation of annual charges for FY 2003. It states that the Commission inaccurately calculated the volume of transmission that public utilities provided during calendar year 2002 and allocated to PJM a larger share of the Commission's costs than should be the case.¹¹

8. As provided in the Commission's regulations,¹² the Commission bases its annual charges bills on the data that utilities submit on FERC 582. Utilities file this data under oath, and the Commission accepts these statements as accurate, until a subsequent audit (or a corrected FERC 582) may reveal errors. Should an audit reveal errors, either in the number of reporting entities, or in the figures that they report, or both, the Commission adjusts the annual charges in the next fiscal year up or down, as appropriate. If there are any errors this year, we will correct those errors through adjustments in the annual

denied, Order No. 641-A, 66 Fed. Reg. 15793 (March 21, 2001), 94 FERC ¶ 61,290 at 62,037 (2001); Annual Charges under the Omnibus Budget Reconciliation Act of 1986 (CNG Power Services, et al.), 87 FERC ¶ 61,074 at 61,302 (1999) (CNG).

⁹18 C.F.R. § 382.201 (2003).

¹⁰See, e.g., Texas Utilities Electric Company, 45 FERC ¶ 61,007 at 61,026 (1988).

¹¹PJM Rehearing at 3-7,

¹²See 18 C.F.R. § 382.201 (2003).

charges next year. In short, the Commission has, and has long had, a process in place to deal with errors in the data submitted.¹³

9. PJM states that the Commission's calculation of the annual charges bills showed no transmission volumes for five companies that did in fact report significant volumes of transmission on the FERC 582s that they submitted to the Commission.¹⁴ None of the companies that PJM refers to had submitted a FERC 582 by the date the Commission calculated its annual charges bills. Three of these companies have since cured this omission¹⁵ and the Commission, consistent with its long-standing practice, described above, will adjust next year's billings to reflect the late-arrived data.¹⁶ With respect to North Central MO Electric Cooperative, it does not provide transmission service; it filed in error. As to Aquila, Inc., the Commission is currently looking into this matter and any error (if one exists) will, consistent with our long-standing practice, described above, be reflected in next year's annual charges billings.

10. The Commission cannot delay billing indefinitely and cannot chase a moving target. It must bill by a date certain if it is to recover its electric regulatory program costs timely, as the governing statute mandates. That is one of the reasons why the Commission's annual charges calculation reflects a true-up process.

11. With respect to PJM's next argument, the Midwest ISO reported two different volumes of transmission and it was not clear by the Commission's billing date which was the correct number. The Commission used the lower number. The Commission is currently looking into this matter and, if it finds that the higher number (or some other

¹³See Revision of Annual Charges to Public Utilities (California Independent System Operator, et al.), 101 FERC ¶ 61,326 at P 9 (2002); Order No. 641, FERC Stats. & Regs. at 31,841; CNG, 87 FERC at 61,303; Annual Charges Under the Omnibus Budget Reconciliation Act of 1986 (Philbro, Inc.), 81 FERC ¶ 61,308 at 62,425 (1997).

¹⁴PJM Rehearing at 3-4. PJM identifies the following companies: Aquila, Inc., Florida Power Corporation, Mississippi Power Company, North Central MO Electric Cooperative and PacifiCorp. Id. at 4 n.3.

¹⁵Florida Power Corporation, Mississippi Power Company, and PacifiCorp have since rectified this omission, but did not do so until after the calculation of the annual charges bills.

¹⁶In this context it is worth noting that last year PJM understated its own volume of transmission by 235,022,485 megawatt hours. This error has been corrected in this year's billing through the true-up process described above.

number) is the correct volume of transmission that the Midwest ISO provided in calendar year 2002, consistent with its long-standing practice, described above, the Commission will adjust next year's annual charges accordingly.

12. PJM also questions why certain companies did not pay any annual charges.¹⁷ One company to which it refers, Montana Power Company, did pay its annual charges, but under its new corporate name, Northwestern Energy, LLC. Likewise, Western Resources, Inc. filed under Westar Energy, Inc. The other companies filed FERC 582s in error. They are power marketers, not public utilities providing transmission service.¹⁸ Under Order No. 641, these companies were not subject to annual charges for FY 2002.¹⁹ Although the Commission issued annual charges bills to these companies in FY 2002, once it discovered the error, the Commission, through the true-up mechanism described above, credited their accounts in FY 2003 for amounts incorrectly billed for FY 2002.

The Commission orders:

PJM's request for rehearing is hereby denied.

By the Commission.

(S E A L)

Magalie R. Salas
Secretary

¹⁷PJM refers to Enron Energy Services, Inc., AES Eastern Energy, Western Resources, Inc. and Montana Power Company.

¹⁸See, e.g., Enron Power Marketing, Inc., and Enron Energy Services, Inc., 103 FERC ¶ 61,343 (2003). Enron Energy Services, Inc.'s public utility affiliate, Portland General Electric, filed a FERC 582 and was billed.

Compare 15 U.S.C. § 79z-5a (2000) with AES Eastern Energy, L.P., 86 FERC ¶ 62,102 (1999).

¹⁹See, e.g., Order No. 641, FERC Stats. & Regs. at 31,850 n.57.